

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL MERCHAN and
JENNIFER MERCHAN,

Plaintiffs,

vs.

Case No:
Hon.
Magistrate

ALLEN PARK POLICE DEPARTMENT,
a Municipal Corporation, OFFICER MOORE,
SERGEANT HILLOCK, OFFICER GERSKY,
OFFICER HARRIS, OFFICER MACK,
LIEUTENANT GAYDOS, DETECTIVE DAVID,
DETECTIVE MILLER, OFFICER THORBURN,
DETECTIVE WILKEWITZ, OFFICER MEHALL,
SERGEANT EGAN, SERGEANT GENAW,
SERGEANT GRANICA, OFFICER SAMBORSKI,
OFFICER ROWELL, LIEUTENANT RIMER,
DETECTIVE FAULKNER, CHIEF TAMSEN,
OFFICER ALBRIGHT, DETECTIVE MATHIS,
OFFICER HARVEY, SERGEANT CERRONI,
OFFICER BACILE, OFFICERS LAVOIE,
OFFICER HUGGINS, OFFICER SZYMONIAK and
MELVINDALE POLICE DEPARTMENT,
a Municipal Corporation, LIEUTENANT PUROCHKE,
SERGEANT CADEZ, CORPORAL HINOJOSA,
DETECTIVE WELCH, LIEUTENANT HAYES,
OFFICER DUBOIS, OFFICER EASTON,
DETECTIVE BOWERMAN, Jointly and Severally,

Defendants.

LAURI R. ELLIAS (P31399)
Attorney for Plaintiff
25899 W. 12 Mile Road, Suite 140
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248.356.9700 / 248.356.9710 (fax)

DAVID M. KRAUS (P37986)
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JOHN J. GILLOOLY (P41948)
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RANDALL A. PENTIUK (P32556)
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**NOTICE FOR REMOVAL OF CAUSE TO
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TO: LAURI R. ELLIAS (P31399)

1. On May 20, 2011, Plaintiffs commenced this action in the Circuit Court for the County of Wayne, State of Michigan, by filing their Summons and Complaint in which, the ALLEN PARK POLICE DEPARTMENT, MELVINDALE POLICE DEPARTMENT and JOHN DOE POLICE OFFICERS were the named Defendants.

2. On August 19, 2011, Plaintiffs filed their Amended Complaint in which, the ALLEN PARK POLICE DEPARTMENT, OFFICER MOORE, SERGEANT HILLOCK, OFFICER GERSKY, OFFICER HARRIS, OFFICER MACK, LIEUTENANT GAYDOS, DETECTIVE DAVID, DETECTIVE MILLER, OFFICER THORBURN, DETECTIVE WILKEWITZ, OFFICER MEHALL, SERGEANT EGAN, SERGEANT GENAW, SERGEANT GRANICA, OFFICER SAMBORSKI, OFFICER ROWELL, LIEUTENANT RIMER. DETECTIVE FAULKNER, CHIEF TAMSEN, OFFICER ALBRIGHT, DETECTIVE MATHIS, OFFICER HARVEY, SERGEANT CERRONI, OFFICER BACILE, OFFICERS LAVOIE, OFFICER HUGGINS, OFFICER SZYMONIAK and MELVINDALE POLICE DEPARTMENT, LIEUTENANT PUROCHKE, SERGEANT CADEZ, CORPORAL HINOJOSA, DETECTIVE WELCH, LIEUTENANT HAYES, OFFICER DUBOIS, OFFICER EASTON, DETECTIVE BOWERMAN, are the named Defendants.

3. Plaintiffs, MICHAEL MERCHAN and JENIFER MERCHAN, are described by Plaintiffs as citizens and residents of the State of Michigan.

4. Plaintiffs herein seek recovery from Defendants, ALLEN PARK POLICE DEPARTMENT, OFFICER MOORE, SERGEANT HILLOCK, OFFICER GERSKY, OFFICER HARRIS, OFFICER MACK, LIEUTENANT GAYDOS, DETECTIVE DAVID, DETECTIVE MILLER, OFFICER THORBURN, DETECTIVE WILKEWITZ, OFFICER MEHALL, SERGEANT EGAN, SERGEANT GENAW, SERGEANT GRANICA, OFFICER SAMBORSKI, OFFICER ROWELL, LIEUTENANT RIMER. DETECTIVE FAULKNER, CHIEF TAMSEN, OFFICER ALBRIGHT, DETECTIVE MATHIS, OFFICER HARVEY, SERGEANT CERRONI, OFFICER BACILE, OFFICERS LAVOIE, OFFICER HUGGINS, OFFICER SZYMONIAK and MELVINDALE POLICE DEPARTMENT, LIEUTENANT PUROCHKE, SERGEANT CADEZ, CORPORAL HINOJOSA, DETECTIVE WELCH, LIEUTENANT HAYES, OFFICER DUBOIS, OFFICER EASTON, DETECTIVE BOWERMAN, alleging violations of Plaintiffs' Fourth and Fourteenth Amendment rights guaranteed by the United States Constitution among other allegations.

5. This Court has original jurisdiction over Plaintiffs' claims inasmuch as those claims arise under the Constitution and laws of the United States, which provide for equal rights, and this action is removable to this Court pursuant to 28 U.S.C. §1441 (a), (b) and 28 U.S.C. sec. 1443(2). The entire cause is removable, including claims arising under Michigan law, pursuant to 28 U.S.C. sec 1441(c).

6. That this Notice for Removal is hereby filed with this Court within 30 days after receipt by Defendants, ALLEN PARK POLICE DEPARTMENT, OFFICER MOORE, SERGEANT HILLOCK, OFFICER GERSKY, OFFICER HARRIS, OFFICER MACK, LIEUTENANT GAYDOS, DETECTIVE DAVID, DETECTIVE MILLER, OFFICER THORBURN, DETECTIVE WILKEWITZ, OFFICER MEHALL, SERGEANT EGAN,

SERGEANT GENAW, SERGEANT GRANICA, OFFICER SAMBORSKI, OFFICER ROWELL, LIEUTENANT RIMER. DETECTIVE FAULKNER, CHIEF TAMSEN, OFFICER ALBRIGHT, DETECTIVE MATHIS, OFFICER HARVEY, SERGEANT CERRONI, OFFICER BACILE, OFFICERS LAVOIE, OFFICER HUGGINS and OFFICER SZYMONIAK, of a copy of the initial pleading and First Amended Complaint, which sets forth a claim for relief upon which this action is based, as required by 28 U.S.C. § 1446(b), having been received by Defendants, on May 31, 2011 and August 19, 2011.

7. That written notice of the filing of this Notice for Removal, has been given to the adverse party as required by law and a copy of the Notice for Removal has been filed with the Clerk of the Circuit Court for the County of Wayne, State of Michigan.

8. Attached is a copy of all process and pleadings served upon these Defendants, ALLEN PARK POLICE DEPARTMENT, OFFICER MOORE, SERGEANT HILLOCK, OFFICER GERSKY, OFFICER HARRIS, OFFICER MACK, LIEUTENANT GAYDOS, DETECTIVE DAVID, DETECTIVE MILLER, OFFICER THORBURN, DETECTIVE WILKEWITZ, OFFICER MEHALL, SERGEANT EGAN, SERGEANT GENAW, SERGEANT GRANICA, OFFICER SAMBORSKI, OFFICER ROWELL, LIEUTENANT RIMER. DETECTIVE FAULKNER, CHIEF TAMSEN, OFFICER ALBRIGHT, DETECTIVE MATHIS, OFFICER HARVEY, SERGEANT CERRONI, OFFICER BACILE, OFFICERS LAVOIE, OFFICER HUGGINS and OFFICER SZYMONIAK, in this cause.

WHEREFORE, Defendants ALLEN PARK POLICE DEPARTMENT, OFFICER MOORE, SERGEANT HILLOCK, OFFICER GERSKY, OFFICER HARRIS, OFFICER MACK, LIEUTENANT GAYDOS, DETECTIVE DAVID, DETECTIVE MILLER, OFFICER THORBURN, DETECTIVE WILKEWITZ, OFFICER MEHALL, SERGEANT EGAN, SERGEANT GENAW, SERGEANT GRANICA, OFFICER SAMBORSKI, OFFICER ROWELL, LIEUTENANT RIMER. DETECTIVE FAULKNER, CHIEF TAMSEN, OFFICER ALBRIGHT, DETECTIVE MATHIS, OFFICER HARVEY, SERGEANT CERRONI, OFFICER BACILE, OFFICERS LAVOIE, OFFICER HUGGINS and OFFICER SZYMONIAK, respectfully request that this Honorable Court enter an Order removing this cause from the Circuit Court for the County of Wayne, State of Michigan to the United States District Court, Eastern District of Michigan, Southern Division.

Respectfully submitted,

GARAN LUCOW MILLER, P.C.

s/John J. Gillooly
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P41948

DATED: August 30, 2011

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MICHAEL MERCHAN and
JENNIFER MERCHAN,

Plaintiffs,

vs.

Case No: 11-006103 NO

ALLEN PARK POLICE DEPARTMENT, Hon. Prentis Edwards
a Municipal Corporation,
OFFICER MOORE, SERGEANT HILLOCK,
OFFICER GERSKY, OFFICER HARRIS,
OFFICER MACK, LIEUTENANT GAYDOS,
DETECTIVE DAVID, DETECTIVE MILLER,
OFFICER THORBURN, DETECTIVE WILKEWITZ,
OFFICER MEHALL, SERGEANT EGAN,
SERGEANT GENAW, SERGEANT GRANICA,
OFFICER SAMBORSKI, OFFICER ROWELL,
LIEUTENANT RIMER, DETECTIVE FAULKNER,
CHIEF TAMSEN, OFFICER ALBRIGHT,
DETECTIVE MATHIS, OFFICER HARVEY,
SERGEANT CERRONI, OFFICER BACILE,
OFFICER LAVOIE, OFFICER HUGGINS,
OFFICER SZYMONIAK,
and
MELVINDALE POLICE DEPARTMENT,
a Municipal Corporation,
LIEUTENANT PUROCHKE, SERGEANT CADEZ,
CORPORAL HINOJOSA, DETECTIVE WELCH,
LIEUTENANT HAYES, OFFICER DUBOIS,
OFFICER EASTON, DETECTIVE BOWERMAN,
Jointly and Severally,

Defendants.

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2011 AUG 19 P 12:44
CLERK OF COURT
WAYNE COUNTY CLERK

RANDALL A. PENTIUK P-32556	JOHN J. GILLOOLY P-41948
Co-Counsel for Defendant	Attorney for Defendant Allen Park P.D.
Melvindale P.D.	1000 Woodbridge
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Office: 248.281.7100	Fax: 313.259.0450
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PLAINTIFFS' FIRST AMENDED COMPLAINT AND
RELIANCE UPON JURY DEMAND

NOW COME the Plaintiffs, by and through their attorney, Lauri R. Elias, and complain against the above-named Defendants, jointly and severally, and state as follows:

PARTIES

1. Plaintiffs, Michael Merchan and Jennifer Merchan, are husband and wife, and are residents of the City of Allen Park, County of Wayne, State of Michigan residing at 15546 Anne in Allen Park, MI

2. At all times relevant to this action, Defendant, Allen Park Police Department, was and still is a municipal corporation, duly organized, existing and carrying on governmental functions under and by virtue of the laws of the State of Michigan.

3. Defendants, Officer Moore, Sergeant Hillock, Officer Gersky, Officer Harris, Officer Mack, Lieutenant Gaydos, Detective David, Detective Miller, Officer Thorburn, Detective Wilkewitz, Officer Mehall, Sergeant Egan, Sergeant Genaw, Sergeant Granica, Officer Samborski, Officer Rowell, Lieutenant Rimer, Detective Faulkner, Chief Tamsen, Officer Albright, Detective Mathis, Officer Harvey, Sergeant Cerroni, Officer Bacile, Officer Lavoie, Officer Huggins and Officer Szymoniak (referred to after this point as Defendant Allen Park Officers) were at the time of the incident, and at all times relevant

to this action, employed as police officers by the Allen Park Police Department in the City of Allen Park.

4. At all times relevant to this action, Defendant, Melvindale Police Department, was and still is a municipal corporation, duly organized, existing and carrying on governmental functions under and by virtue of the laws of the State of Michigan.

5. Defendants, Lieutenant Purochke, Sergeant Cadez, Corporal Hinojosa, Detective Welch, Lieutenant Hayes, Officer Dubois, Officer Easton and Detective Bowerman (referred to after this point as Defendant Melvindale Officers) were at the time of the incident, and at all times relevant to this action, employed as police officers by the Melvindale Police Department in the City of Melvindale.

ALLEGATIONS OF FACT

6. On or about Friday, May 22, 2009, Plaintiffs' next-door-neighbor, Mark Fussner, whose home is located at 15536 Anne Avenue in Allen Park, Michigan, was apparently issued a Notice of Eviction via a 23rd District Court warrant officer.

7. Mr. Fussner apparently was uncooperative, and thus members of the Allen Park Police Department arrived at the scene.

8. Upon information and belief, there was gunfire between Mr. Fussner and the Allen Park Police Officers, wherein an Officer Huggins was injured.

9. Thereafter, in excess of 500 rounds were fired by Defendants.

10. As a result of the indiscriminate and excessive firing from the Defendants, prior to a task force swat team arriving and/or engaging in any armed barricaded negotiations, the Merchan home was shot up by the Allen Park Police Department Officers.

11. That during the course of the shooting, Plaintiff, Michael Merchan, called the Allen Park Police Department via 911, asking for assistance as officers were shooting into his home and he was unable to get into a basement for protection.

12. Plaintiff informed the Police Department that he had his two year old daughter with him at the time, and was attempting to protect her from the shooting.

13. Notwithstanding Plaintiff's moving into the furthest bedroom in his home away from the shooting, Plaintiff and his daughter and two nephews were subject to multiple gunshots which entered into his home.

14. During the shooting, Plaintiff, Michael Merchan, called 911 and told the Police Department that he was trapped upstairs with rounds entering the home and that he had children with him.

15. Plaintiff was told to gather the children and get into the basement while there was a "break in the shooting", that was not possible until the shooting was all over with.

16. At no time did any Police Officers attempt to help Plaintiff.

17. At no time did any of the numerous Officers present do anything other than continue to shoot at the Fussner home, and continued to place Plaintiff and his family in extreme danger.

18. That the Allen Park Police Department and its Officers, along with the Melvindale Police Department and its Officers, who provided assistance to the Allen Park Police Department, failed to control the scene.

19. That Defendants failed to protect innocent bystanders.

20. That the Defendants negligently continued to fire multiple shots, many of which ultimately entered into the home of your Plaintiffs.

21. That the course of conduct of Defendants subjected the Plaintiffs to potential serious injury, and did damage to the home of the Plaintiffs.

22. That the actions of the Defendant Allen Park and Melvindale Officers demonstrated a perilous and complete disregard for the welfare of the Plaintiffs.

23. That bullets fired by the Defendant Allen Park and Melvindale Police Officers went into the kitchen and breakfast room of Plaintiffs' home, and also entered the bedroom of the two year old daughter of the Plaintiffs, piercing both the wall and the headboard of the bed in that bedroom.

COUNT I-ASSAULT

1-23. Plaintiffs repeat paragraphs 1 through 23.

24. On or about May 22, 2009, the Defendant Allen Park and Melvindale Officers intentionally and without provocation assaulted Plaintiffs, and as a proximate result, Plaintiffs suffered damage to their home, mental anguish and mental anxiety.

25. As a proximate result of the actions of the Allen Park and Melvindale Officers, Plaintiffs suffered the injuries set forth above, and Plaintiffs are entitled to the relief and damages set forth below.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment against the Defendants, jointly and severally, in whatever amount in excess of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS that is found to be fair and just.

COUNT II-GROSS NEGLIGENCE

1-25. Plaintiffs repeat paragraphs 1 through 25.

26. That the actions of the Defendant Allen Park and Melvindale Officers involved in the incident were grossly negligent and were with complete disregard to innocent bystanders.

27. The actions of the Defendant Allen Park and Melvindale Officers were in spite of the fact that Plaintiff called 911 to inform Defendants that he and children were in the home and that bullets were ricocheting through his home.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment against the Defendants, jointly and severally, in whatever amount in excess of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS that is found to be fair and just.

COUNT III-INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1-27. Plaintiffs repeat paragraphs 1 through 27.

28. That as a result of the actions of the Defendant Allen Park and Melvindale Officers, Plaintiffs were caused to suffer extreme emotional distress.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment against the Defendants, jointly and severally, in whatever amount in excess of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS that is found to be fair and just.

COUNT IV-DEPRIVATION OF CIVIL RIGHTS

1-28. Plaintiffs repeat paragraphs 1 through 28.

29. That pursuant to 42 U.S.C. Section 1983:

Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit and equity, or other proper proceeding for redress.

30. This action arises under the United States Constitution, particularly under the provision of the Fourth and Fourteenth Amendments to the Constitution of the United States and under Federal law, particularly the Civil Rights Act, Title 42 of the United States Code, Section 1983, and under the Constitution of the State of Michigan, Article 1, Section II.

31. All the defendants herein are persons within the meaning of 42 U.S.C. Section 1983.

32. Defendants Allen Park Police Department and Melvindale Police Department had certain policies, rules and regulations, and Defendants' Officers underwent training in police procedures that their officers are mandated to follow.

33. The Defendants, Allen Park Police Department and Melvindale Police Department have recklessly and intentionally failed to train their police officers in proper arrest procedures.

34. All the defendants were at all times relevant to this action, acting under color of Michigan statute, ordinance, regulations, custom and usage within the meaning of 42 U.S.C. Section 1983, in the imprisonment of plaintiffs by the Defendant Allen Park and Melvindale Police Officers, all under the direction, support, knowledge and authority of the Defendants Allen Park Police Department and Melvindale Police Department.

35. Prior to the commission of the wrongful acts in furtherance of the actions to deprive plaintiff of equal protection under the laws, and of equal privileges and immunities under the laws, each of the individual defendants knew of the existence of the intended event.

36. Each of the defendants then knew that the defendants were about to effectuate the events by the commission of the wrongful acts described above.

37. Each of the individual defendants possessed the power to prevent, or aid in preventing, the commission of such wrongful acts, and accordingly owed a duty to plaintiffs to prevent, aid in preventing and/or attempt to prevent the commission of such wrongful acts.

38. Notwithstanding such knowledge and power the individual defendants breached their duties by neglecting, failing and refusing to prevent, aid in preventing or attempt to prevent the commission of such wrongful acts.

39. Defendants' Officers failed to take any actions to correctly determine the status of the plaintiffs' situation.

40. The conduct of Defendants, and each of them, deprived plaintiffs of the following rights, privileges and immunities secured by the Constitution of the United States:

- (a) The right of plaintiffs not to be deprived of life, liberty or property without due process of law secured by the Fourteenth Amendment to the Constitution of the United States.
- (b) The right of plaintiff not to be subjected to unreasonable search and seizure provided by the Fourth Amendment to the Constitution of the United States.
- (c) The right of plaintiff to be guaranteed equal protection under the laws secured by the Fourteenth Amendment to the Constitution of the United States.

41. By reason of the conduct of defendants, including plaintiffs' imprisonment and the injuries sustained by the acts, plaintiffs was wrongfully and deliberately denied their immediate release.

42. The acts, conduct and behavior of defendants, were performed knowingly, intentionally and with reckless disregard of plaintiffs' safety and continued life, and

defendants Allen Park Police Department and Melvindale Police Department failed to discipline these officers despite their use of excessive force and improper arrest procedures, and their incidents of misconduct and thus ratified and impliedly approved of said conduct, therefore, plaintiffs are entitled, by virtue of 42 U.S.C. Section 1983, to compensatory damages in whatever amount in excess of Twenty Five Thousand (\$25,000.00) Dollars which is found to be fair and just, and by virtue of 42 U.S.C. Section 1988, to punitive damages in an amount in excess of Twenty Five Thousand (\$25,000.00) Dollars.

THEREFORE, (1) Plaintiffs respectfully requests that this Honorable Court enter judgment for compensatory damages against the defendants, jointly and severally, in whatever amount in excess of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS which plaintiffs are found to be entitled, plus interest, costs and attorney fees; and (2) Plaintiffs respectfully requests that this Honorable Court enter judgment for punitive damages under 42 U.S.C. Section 1983 against the individual Defendant Officers in whatever amount in excess of TWENTY FIVE THOUSAND (\$25,000.00) DOLLARS which is found to be just.

RELIANECE UPON JURY DEMAND

Plaintiffs rely upon the jury demand previously filed in this matter.

LAURI R. ELLIAS, P.C.

By: 

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Attorney for Plaintiffs
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248.356.9700

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JURY FEE PAID
THIS DATE:
MAY 20 2011

MICHAEL MERCHAN and
JENNIFER MERCHAN,

Plaintiffs,

MERCHAN, MICHAEL, et al. v ALLEN
Hon. Prentis Edwards 05/20/2011

vs.



11-006103-NO

ALLEN PARK POLICE DEPARTMENT,
a Municipal Corporation and
MELVINDALE POLICE DEPARTMENT,
a Municipal Corporation, and JOHN DOE
POLICE OFFICERS, Jointly and Severally,

Defendants.

LAURI R. ELLIAS P-31399
Attorney for Plaintiffs
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Office: 248.356.9700
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COMPLAINT AND JURY DEMAND

THERE IS NO OTHER CIVIL ACTION BETWEEN THESE PARTIES
ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE
AS ALLEGED IN THIS COMPLAINT PENDING IN THIS COURT,
NOR HAS ANY SUCH ACTION BEEN PREVIOUSLY FILED AND
DISMISSED OR TRANSFERRED AFTER HAVING BEEN
ASSIGNED TO A JUDGE. MER 2-113(c)(2)(a).

BY: _____

Lauri R. Ellias P31399

NOW COME the Plaintiffs, by and through their attorney, Lauri R. Ellias, and
complain against the above-named Defendants, jointly and severally, and state as follows:

PARTIES

1. Plaintiffs, Michael Merchan and Jennifer Merchan, are husband and wife, and are residents of the City of Allen Park, County of Wayne, State of Michigan residing at 15546 Anne in Allen Park, MI

2. At all times relevant to this action, Defendant, Allen Park Police Department, was and still is a municipal corporation, duly organized, existing and carrying on governmental functions under and by virtue of the laws of the State of Michigan.

3. At all times relevant to this action, Defendant, Melvindale Police Department, was and still is a municipal corporation, duly organized, existing and carrying on governmental functions under and by virtue of the laws of the State of Michigan.

4. At all times relevant to this action, Defendant, John Doe Police Officers, were at the time of the incident, and at all times relevant to this action, employed as Police Officers under the supervision and control of the Allen Park Police Department and Melvindale Police Department.

ALLEGATIONS OF FACT

5. On or about Friday, May 22, 2009, Plaintiffs' next-door-neighbor, Mark Fussner, whose home is located at 15536 Anne Avenue in Allen Park, Michigan, was apparently issued a Notice of Eviction via a 23rd District Court warrant officer.

6. Mr. Fussner apparently was uncooperative, and thus members of the Allen Park Police Department arrived at the scene.

7. Upon information and belief, there was gunfire between Mr. Fussner and the Allen Park Police Officers, wherein an Officer Huggins was injured.

8. Thereafter, in excess of 500 rounds were fired by Defendants.

9. As a result of the indiscriminate and excessive firing from the Defendants, prior to a task force swat team arriving and/or engaging in any armed barricaded negotiations, the Merchan home was shot up by the Allen Park Police Department Officers.

10. That during the course of the shooting, Plaintiff, Michael Merchan, called the Allen Park Police Department via 911, asking for assistance as officers were shooting into his home and he was unable to get into a basement for protection.

11. Plaintiff informed the Police Department that he had his two year old daughter with him at the time, and was attempting to protect her from the shooting.

12. Notwithstanding Plaintiff's moving into the furthest bedroom in his home away from the shooting, Plaintiff and his daughter and two nephews were subject to multiple gunshots which entered into his home.

13. During the shooting, Plaintiff, Michael Merchan, called 911 and told the Police Department that he was trapped upstairs with rounds entering the home and that he had children with him.

14. Plaintiff was told to gather the children and get into the basement while there was a "break in the shooting", that was not possible until the shooting was all over with.

15. At no time did any Police Officers attempt to help Plaintiff.

16. At no time did any of the numerous Officers present do anything other than continue to shoot at the Fussner home, and continued to place Plaintiff and his family in extreme danger.

17. That the Allen Park Police Department and its Officers, along with the Melvindale Police Department and its Officers, who provided assistance to the Allen Park Police Department, failed to control the scene.

18. That Defendants failed to protect innocent bystanders.

19. That the Defendants negligently continued to fire multiple shots, many of which ultimately entered into the home of your Plaintiffs.

20. That the course of conduct of Defendants subjected the Plaintiffs to potential serious injury, and did damage to the home of the Plaintiffs.

21. That the actions of the Officers demonstrated a perilous and complete disregard for the welfare of the Plaintiffs.

22. That bullets fired by the Defendant Police Officers went into the kitchen and breakfast room of Plaintiffs' home, and also entered the bedroom of the two year old daughter of the Plaintiffs, piercing both the wall and the headboard of the bed in that bedroom.

COUNT I-ASSAULT

1-22. Plaintiffs repeat paragraphs 1 through 22.

23. On or about May 22, 2009, the Defendant John Doe Police Officers intentionally and without provocation assaulted Plaintiffs, and as a proximate result, Plaintiffs suffered damage to their home, mental anguish and mental anxiety.

24. As a proximate result of the actions of the John Doe Police Officers, Plaintiffs suffered the injuries set forth above, and Plaintiffs are entitled to the relief and damages set forth below.

JURY DEMAND

Plaintiffs demand a trial by jury.

LAURIE ELLIAS, P.C.

By: 

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248.356.9700

Dated: May 20, 2011

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL MERCHAN and
JENNIFER MERCHAN,

Plaintiffs,

vs.

Case No:
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ALLEN PARK POLICE DEPARTMENT,
a Municipal Corporation, OFFICER MOORE,
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MELVINDALE POLICE DEPARTMENT,
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OFFICER DUBOIS, OFFICER EASTON,
DETECTIVE BOWERMAN, Jointly and Severally,

Defendants.

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AFFIDAVIT

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

JOHN J. GILLOOLY, being first duly sworn, deposes and says, that he is associated with the law firm of GARAN LUCOW MILLER, P.C. and that he has been charged with the defense and representation of, ALLEN PARK POLICE DEPARTMENT, OFFICER MOORE, SERGEANT HILLOCK, OFFICER GERSKY, OFFICER HARRIS, OFFICER MACK, LIEUTENANT GAYDOS, DETECTIVE DAVID, DETECTIVE MILLER, OFFICER THORBURN, DETECTIVE WILKEWITZ, OFFICER MEHALL, SERGEANT EGAN, SERGEANT GENAW, SERGEANT GRANICA, OFFICER SAMBORSKI, OFFICER ROWELL, LIEUTENANT RIMER. DETECTIVE FAULKNER, CHIEF TAMSEN, OFFICER ALBRIGHT, DETECTIVE MATHIS, OFFICER HARVEY, SERGEANT CERRONI, OFFICER BACILE, OFFICERS LAVOIE, OFFICER HUGGINS and OFFICER SZYMONIAK, Defendants, herein; that in such capacity he has prepared the foregoing Notice for Removal of Cause to the United States District Court, Eastern District of Michigan, Southern Division, that the matters set forth in said Notice are true except as to those matters stated herein to be upon his information and belief as to which matters he is informed and believes same to be true.

Further deponent sayeth not.

s/John J. Gillooly
JOHN J. GILLOOLY (P41948)

Subscribed and sworn to before me
on the 30th day of August, 2011.

s/Deborah Krauss
Deborah Krauss, Notary Public
County of Wayne
State of Michigan
My Commission Expires: 09/19/2013

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL MERCHAN and
JENNIFER MERCHAN,

Plaintiffs,

vs.

Case No:
Hon.
Magistrate

ALLEN PARK POLICE DEPARTMENT,
a Municipal Corporation, OFFICER MOORE,
SERGEANT HILLOCK, OFFICER GERSKY,
OFFICER HARRIS, OFFICER MACK,
LIEUTENANT GAYDOS, DETECTIVE DAVID,
DETECTIVE MILLER, OFFICER THORBURN,
DETECTIVE WILKEWITZ, OFFICER MEHALL,
SERGEANT EGAN, SERGEANT GENAW,
SERGEANT GRANICA, OFFICER SAMBORSKI,
OFFICER ROWELL, LIEUTENANT RIMER.
DETECTIVE FAULKNER, CHIEF TAMSEN,
OFFICER ALBRIGHT, DETECTIVE MATHIS,
OFFICER HARVEY, SERGEANT CERRONI,
OFFICER BACILE, OFFICERS LAVOIE,
OFFICER HUGGINS, OFFICER SZYMONIAK and
MELVINDALE POLICE DEPARTMENT,
a Municipal Corporation, LIEUTENANT PUROCHKE,
SERGEANT CADEZ, CORPORAL HINOJOSA,
DETECTIVE WELCH, LIEUTENANT HAYES,
OFFICER DUBOIS, OFFICER EASTON,
DETECTIVE BOWERMAN, Jointly and Severally,

Defendants.

LAURI R. ELLIAS (P31399)
Attorney for Plaintiff
25899 W. 12 Mile Road, Suite 140
Southfield, MI 48034
248.356.9700 / 248.356.9710 (fax)

DAVID M. KRAUS (P37986)
Attorney for Melvindale Police Department
1441 W. Long Lake Road, Suite 305
Troy, MI 48098
248.312.7939 / 248.312.7940 (fax)

JOHN J. GILLOOLY (P41948)
Attorney for Allen Park Police Department
1000 Woodbridge Street
Detroit, MI 48207
313.446.5501 / 313.259.0450 (fax)

RANDALL A. PENTIUK (P32556)
Co-Counsel for Melvindale Police Dept.
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192
248.281.7100 / 248.281.7102 (fax)

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

DEBORAH KRAUSS, being first duly sworn, deposes and says that she is associated with the law firm of GARAN LUCOW MILLER, P.C., attorney for Defendants and that on August 30, 2011, she caused to be served a true copy of **NOTICE FOR REMOVAL, AFFIDAVIT, and PROOF OF SERVICE** upon the following:

Lauri R. Elias, Esq.
25899 W. 12 Mile Road, Suite 140
Southfield, MI 48034

Clerk Assignment
WAYNE COUNTY CIRCUIT COURT
Two Woodward Avenue
Detroit, MI 48226

David M. Kraus, Esq.
1441 W. Long Lake Road, Suite 305
Troy, MI 48098

Randall A. Pentiuk, Esq.
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192

by enclosing same in a pre-addressed, pre-stamped envelope and depositing same in the United States Mail.

s/Deborah Krauss
DEBORAH KRAUSS

970246.1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MICHAEL MERCHAN and
JENNIFER MERCHAN,

Plaintiffs,

vs.

Case No: 11-006103-NO
Hon. Prentis Edwards

ALLEN PARK POLICE DEPARTMENT,
a Municipal Corporation, OFFICER MOORE,
SERGEANT HILLOCK, OFFICER GERSKY,
OFFICER HARRIS, OFFICER MACK,
LIEUTENANT GAYDOS, DETECTIVE DAVID,
DETECTIVE MILLER, OFFICER THORBURN,
DETECTIVE WILKEWITZ, OFFICER MEHALL,

**NOTICE OF FILING OF
REMOVAL**

SERGEANT EGAN, SERGEANT GENAW,
SERGEANT GRANICA, OFFICER SAMBORSKI,
OFFICER ROWELL, LIEUTENANT RIMER.
DETECTIVE FAULKNER, CHIEF TAMSEN,
OFFICER ALBRIGHT, DETECTIVE MATHIS,
OFFICER HARVEY, SERGEANT CERRONI,
OFFICER BACILE, OFFICERS LAVOIE,
OFFICER HUGGINS, OFFICER SZYMONIAK and
MELVINDALE POLICE DEPARTMENT,
a Municipal Corporation, LIEUTENANT PUROCHKE,
SERGEANT CADEZ, CORPORAL HINOJOSA,
DETECTIVE WELCH, LIEUTENANT HAYES,
OFFICER DUBOIS, OFFICER EASTON,
DETECTIVE BOWERMAN, Jointly and Severally,

Defendants.

LAURI R. ELLIAS (P31399)
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JOHN J. GILLOOLY (P41948)
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313.446.5501 / 313.259.0450 (fax)

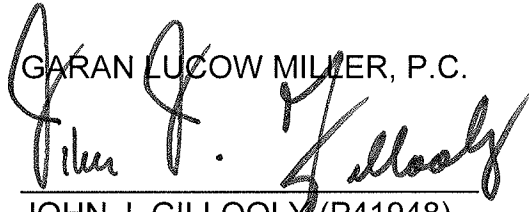
DAVID M. KRAUS (P37986)
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RANDALL A. PENTIUK (P32556)
Co-Counsel for Melvindale Police Dept.
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192
248.281.7100 / 248.281.7102 (fax)

NOTICE OF FILING OF REMOVAL

TO: Clerk of the Court – Lauri R. Elias, Esq.

PLEASE TAKE NOTICE that a Notice of Removal of the entitled action from the Wayne County Circuit Court, State of Michigan, to the United States District Court for the Eastern District of Michigan, a copy of which is attached hereto, was duly filed August 30, 2011, in the United States District Court for the Eastern District of Michigan.

BY:  GARAN LUCOW MILLER, P.C.
JOHN J. GILLOOLY (P41948)
Attorney for Defendants
1000 Woodbridge Street
Detroit, MI 48207
313.446.5501
E-mail: jgillooly@garanlucow.com

DATED: August 30, 2010

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MICHAEL MERCHAN and
JENNIFER MERCHAN,

Plaintiffs,

vs.

Case No: 11-006103-NO
Hon. Prentis Edwards

ALLEN PARK POLICE DEPARTMENT,
a Municipal Corporation, OFFICER MOORE,
SERGEANT HILLOCK, OFFICER GERSKY,
OFFICER HARRIS, OFFICER MACK,
LIEUTENANT GAYDOS, DETECTIVE DAVID,
DETECTIVE MILLER, OFFICER THORBURN,
DETECTIVE WILKEWITZ, OFFICER MEHALL,
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SERGEANT GRANICA, OFFICER SAMBORSKI,
OFFICER ROWELL, LIEUTENANT RIMER.
DETECTIVE FAULKNER, CHIEF TAMSEN,
OFFICER ALBRIGHT, DETECTIVE MATHIS,
OFFICER HARVEY, SERGEANT CERRONI,
OFFICER BACILE, OFFICERS LAVOIE,
OFFICER HUGGINS, OFFICER SZYMONIAK and
MELVINDALE POLICE DEPARTMENT,
a Municipal Corporation, LIEUTENANT PUROCHKE,
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DETECTIVE WELCH, LIEUTENANT HAYES,
OFFICER DUBOIS, OFFICER EASTON,
DETECTIVE BOWERMAN, Jointly and Severally,

Defendants.

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Wyandotte, MI 48192
248.281.7100 / 248.281.7102 (fax)

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)


DEBORAH KRAUSS, being first duly sworn, deposes and says that she is employed by GARAN LUCOW MILLER, P.C., and that on the 30th day of August, 2011, she served a copy of: **NOTICE OF REMOVAL OF CAUSE TO UNITED STATES DISTRICT COURT, AND PROOF OF SERVICE** upon:

Lauri R. Elias, Esq.
25899 W. 12 Mile Road, Suite 140
Southfield, MI 48034

David M. Kraus, Esq.
1441 W. Long Lake Road, Suite 305
Troy, MI 48098

Randall A. Pentiuk, Esq.
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192

by enclosing same in a pre-addressed, pre-stamped envelope and depositing same in the United States Mail.


Deborah Krauss